

FILED

1 U.S. DISTRICT COURT

2 EASTERN DISTRICT OF TEXAS

Clerk, U.S. District Court
Texas Eastern

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4 FEB 04 2021

5 Mr. Michael Moates

6 Plaintiff

7 Case No.: 4:20-cv-00896

8 v.

9 Facebook Inc.

10 Defendant

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MOTION FOR ORAL

ARGUMENT ON DEFENDANTS

MOTION TO DISMISS AND

MOTION TO TRANSFER VENUE

Plaintiff Michael Moates respectfully requests the court allow oral arguments on the Motion to Dismiss and Motion to Transfer Venue. In their Motion to Dismiss, Defendants raise numerous complex questions that arise from both state and federal law. There are many statements made in the Defendants Motion to Dismiss, Motion to Transfer Venue, and the attachments therein that are factually inaccurate.

This court should be concerned with the potential for perjury by Facebook employee Jenny Pricer. Information submitted by her was done “under penalty of perjury” but was factually inaccurate. For example, she claims that the Plaintiff created a Facebook account in 2017 and this is simply false.

The Defendant also failed to address key issues in their Motion to Dismiss. For example, they cite the Communications Decency Act but fail to address the Plaintiff constitutional challenge of this law by Congress. Keep in mind that pursuant to FCRP 5.1 “Unless the court

1 sets a later time, the attorney general may intervene within 60 days after the notice is filed or
2 after the court certifies the challenge, whichever is earlier. Before the time to intervene expires,
3 the court may reject the constitutional challenge, but may not enter a final judgment holding the
4 statute unconstitutional.” The Plaintiff notified the Attorney General on 27 December 2020. That
5 means the court respectfully cannot issue a final judgement determining whether the statute is
6 constitutional or not until 27 February 2021.

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8 They allege the Plaintiff was not specific with many of his claims for example they
9 specifically state that with regards to ads he did not say what ads, when, and where the ads were
10 made. That is primary because this would come out in discovery. Many of the pieces of
11 information the Plaintiff needs to support his case are blocked because the Defendants have
12 removed his access to said information. The evidence exists, the Defendant is just restricting the
13 Plaintiffs legal right to this information.
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15 It is clear that the Defendants want to dismiss this claim so they will not be required to
16 participate in discovery which would give the Plaintiff the information needed to respond to their
17 questions raised.
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19 In addition to the Motion to Dismiss, the Defendants present a Motion to Transfer Venue.
20 There are many issues with their Motion to Transfer. Starting again with Mrs. Pricer’s perjury
21 before the court. Following that, they fail to address the Force Majeure clause in Section 12 of
22 the Facebook Advertising Terms and Conditions¹. This clause states “Excluding payment
23 obligations, neither party will be liable for any delay or default in the performance of its
24 obligations if such delay or default is caused by conditions beyond its reasonable control,
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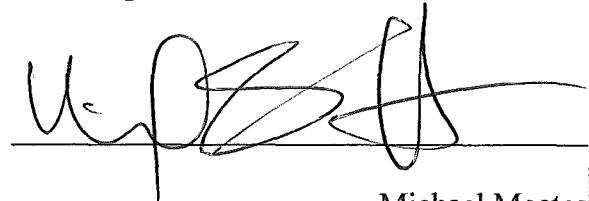
28 ¹ https://www.facebook.com/business/direct_terms_ads_en.php

1 including fire, flood, accident, earthquakes, telecommunications line failures, electrical outages,
2 network failures or acts of God (collectively, "Force Majeure")."

3 We are in the middle of a world-wide pandemic. The Plaintiff suffers from Asthma, Sleep
4 Breathing problems (uses a bipaps machine), a severe cough, and respiratory problems. Asking
5 him to travel is unreasonable. Especially given the Force Majeure clause since it states, "neither
6 party will be liable for any delay or default in the performance of its obligations." Whether
7 flying or traveling by bus the Plaintiff would open himself up to exposure. Many would not let
8 him fly given he cannot wear a mask. This is because the CDC and Texas Department of Health
9 and Human Service recommend those with breathing problems not wear a mask or travel²³.
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11 Respectfully, the Plaintiff requests this court schedule oral arguments on these motions.
12 The Plaintiff respectfully moves the court to set aside 45 minutes for each side to make
13 arguments with time for a response and to answer the courts questions.

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² <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover-guidance.html>

³ <https://www.dshs.texas.gov/coronavirus/faq.aspx>